142

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No. 09-292

Supreme Court, U.S.
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In The

Supreme Court of the United States

ANTHONY MARTINI,

Petitioner,

v.

GODADDY.COM, INC. and
WILD WEST DOMAINS, INC.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

GoDaddy.com, Inc. ("GoDaddy") is a corporation organized pursuant to the laws of the State of Arizona. GoDaddy.com has no parent corporation and no publicly held corporation owns 10% or more of its stock. Wild West Domains, Inc. ("Wild West Domains") is a corporation organized pursuant to the laws of the State of Arizona. Wild West Domains is a wholly owned subsidiary of Go Daddy Group, Inc. and no publicly held corporation owns 10% or more of its stock.

STATEMENT OF THE CASE

Respondents GoDaddy and Wild West Domains (together "Respondents") submit this Brief in Opposition to the Petition for a Writ of Certiorari (the "Petition") filed by Petitioner Anthony Martini ("Petitioner"). Petitioner seeks to overturn the judgment of the United States Court of Appeals for the Ninth Circuit summarily affirming the United States District Court for the Central District of California's judgment, pursuant to Federal Rule of Civil Procedure 12(b)(6), dismissing Petitioner's second amended complaint without leave to amend for failure to state a claim upon which relief can be granted. The Court of Appeals reasoned that the questions raised on appeal were so insubstantial as not to require further argument.

Petitioner is an entrepreneur who operates several websites. Respondents provide Internet domain name registration services, and Petitioner alleged to have registered more than 300 domain names with Respondents. Petitioner alleged that Respondents stole his domain names, and possibly engaged in terrorist activity.

Based on these allegations and others, Petitioner asserted seven claims against Respondents in his second amended complaint: (1) an unidentified claim requesting that the District Court order Respondents to pay Petitioner $1,000 for each of Petitioner's domain names; (2) injunctive relief; (3) violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030,

et seq.; (4) violations of California Penal Code § 502; (5) violations of the Electronic Communication Privacy Act, 18 U.S.C. § 2701, *et seq.*; (6) breach of contract; and (7) violations of the CAN-SPAM Act, 15 U.S.C. § 17701, *et seq.*

As with Petitioner's original complaint and first amended complaint, the District Court dismissed the second amended complaint for failure to state a claim upon which relief can be granted. The District Court reasoned that it had repeatedly advised Petitioner to amend his pleadings by including specific facts that tie his theories of wrongdoing to his legal claims. Petitioner had been given three opportunities to produce a viable complaint, and still was unable to state a single viable claim for relief. The District Court acknowledged that a pro se litigant must be given leave to amend his complaint unless it is absolutely clear that the deficiencies of the complaint cannot be cured by amendment. The District Court concluded, however, that this leniency has limits, and dismissal without leave to amend is appropriate when a pro se litigant repeatedly files defective complaints despite instructions from the court on how to cure the deficiencies of the pleadings.

The principal issues Petitioner proposed to be raised on appeal were whether a district court must accept a pro se complaint as is, whether a district court is "allowed to put a judgment on a plaintiff who is a political refugee and has no money and seeking justice," and whether a motion to dismiss is a response. The proposed issues were not raised or

considered in ruling on Petitioner's second amended complaint in the District Court, nor are they related to any legal errors by the District Court.

The Court of Appeals summarily affirmed the District Court's judgment, pursuant to Ninth Circuit Rule 3-6, reasoning that the questions raised on appeal were so insubstantial as not to require further argument. The questions presented for review in the Petition likewise do not merit this Court's review.

THE COURT SHOULD DENY THE WRIT OF CERTIORARI BECAUSE THE PETITION DOES NOT RAISE ANY ISSUE THAT MERITS THIS COURT'S REVIEW

The questions presented in the Petition do not merit this Court's review. "A petition for a writ of certiorari will be granted only for compelling reasons." Supreme Court Rule 10. The Court's primary role is to decide important constitutional questions, interpret federal statutes, and maintain harmony among the decisions of the Circuit Courts of Appeals and with state court interpretations of federal questions. *See id.*; *see, e.g.*, *Bunting v. Mellen*, 541 U.S. 1019, 1021, 124 S.Ct. 1750, 1752 (2004) (certiorari denied based on absence of direct conflict among circuits on constitutionality of supper prayer at state military college).

Where issues are neither raised before nor considered by the Court of Appeals, the Court will not

ordinarily consider them. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 90 S.Ct. 1598 (1970).

The Court will not grant certiorari simply to correct an error in a Court of Appeals decision. *See* Supreme Court Rule 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."); *Ticor Title Ins. Co. v. Brown*, 511 U.S. 117, 122, 114 S.Ct. 1359, 1362 (1994) (achieving justice in particular case "is ordinarily not sufficient reason" for granting certiorari).

Applying these standards, the Petition should be denied. None of the 47 questions presented to this Court were raised before or considered by the Court of Appeals. Petitioner fails to cite any legal authority relevant to the questions presented to this Court.

The principal issues Petitioner proposed to be raised on appeal were whether a district court must accept a pro se complaint as is, whether a district court is "allowed to put a judgment on a plaintiff who is a political refugee and has no money and seeking justice," and whether a motion to dismiss is a response. These issues were not raised or considered in the District Court, and are not related to any legal errors by the District Court. Petitioner further fails to cite any legal authority which would support a question warranting review by this Court. This is not the appropriate forum for Petitioner to raise questions

not considered below, or simply to achieve justice of which he feels deprived.

CONCLUSION

This Court should deny the Petition because, as the Court of Appeals correctly determined, the questions presented do not merit further review.

Respectfully submitted,

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